

Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

TALUS 7 & 8 INVESTMENT, LLC, a
Washington limited liability company,

Plaintiff,

v.

ORA Talus 90, LLC, a Washington limited
liability company,

Defendant.

NO. 2:16-cv-01502-JLR

PLAINTIFF TALUS 7 & 8
INVESTMENT, LLC'S RESPONSE TO
ORDER TO SHOW CAUSE
REGARDING SUBJECT MATTER
JURISDICTION

Plaintiff Talus 7 & 8 Investment, LLC ("Talus 7&8"), by and through its undersigned attorneys, hereby responds to the Court's Order to Show Cause Regarding Subject Matter Jurisdiction (the "Order") as follows:

ORA Talus 90, LLC's ("ORA") recitation of the potential damages its acts have caused Talus 7&8 is interesting, but not germane. The gravamen of the Complaint filed by Talus 7&8 is three-fold: 1) The request for declaratory judgment confirming Talus 7&8's rights to construct a water line across ORA's property, as contemplated by the Utility Easement recorded on September 22, 2015 under King County Recording No. 20150922000021; 2) the request for an injunction preventing ORA's interference of Talus 7&8's exercise of its easement rights; and 3) the request for the specific performance of its easement rights.

PLAINTIFF TALUS 7 & 8 INVESTMENT, LLC'S RESPONSE TO
ORDER TO SHOW CAUSE REGARDING SUBJECT MATTER
JURISDICTION – 1
(2:16-cv-01502-JLR)

CARNEY BADLEY SPELLMAN, P.S.
701 Fifth Avenue, Suite 3600
Seattle, WA 98104-7010
(206) 622-8020

1 Talus 7&8 may very well suffer damages due to ORA's breach of the easement
 2 agreement but those damages are speculative and unknown at this point. This is made
 3 apparent ORA's response, which cites no direct or specific evidence of potential damages.
 4 While ORA points to a "Metroscan Property Profile" representing information compiled from
 5 various sources, and other public records and speculative information, it does not provide the
 6 requisite evidence, support, and meaningful analysis required for removal from state court.
 7 ORA bases its assertion of potential damages on general information regarding property
 8 values, but provides no meaningful analysis of potential damages resulting from ORA's
 9 breach of the parties' easement agreement, how any property value relates to damages from
 10 ORA's breach of the easement agreement, or even what kinds of damages could be
 11 proximately caused by its breach. As a result, all such information provided by ORA is
 12 speculative and cannot serve to meet ORA's burden of proving that \$75,000 or more be in
 13 controversy.

14 As the Court points out, "[t]he removal statute is strictly construed, *Shamrock Oil &*
 15 *Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941), and there exists a 'strong presumption
 16 against' removal jurisdiction, *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). Thus,
 17 any doubt as to the right of removal is resolved in favor of remand. *Id.*" Speculative damages
 18 do not provide a basis for removal. *Hairston v. Home Loan & Inv. Bank*, 814 F. Supp. 180,
 19 182 (D. Mass. 1993); *Lowdermilk v. U.S. Bank Nat'l Ass'n*, 479 F.3d 994, 1002 (9th Cir.
 20 2007) ("we cannot base our jurisdiction on Defendant's speculation and conjecture").

21 ORA also bases its note for removal on the concept that the relief sought by Talus
 22 7&8 will cause ORA to incur damages in excess of \$1 million; however, ORA has not
 23 actually alleged any counterclaim. Further, and as the Court points out, any such
 24 counterclaim cannot serve as a basis for jurisdiction. *Mesa Indus., Inc. v. Eaglebrook Prods.*,
 25
 26

1 *Inc.*, 980 F. Supp. 323, 325 (D. Ariz. 1997). Thus, any such reference to ORA's potential
2 damages, even if true, has no bearing on the Court's decision here.

3 ORA's speculative and unsupported arguments regarding Talus 7&8's damages
4 cannot serve met its burden for removal. Talus 7&8 respectfully requests the Court to remand
5 this matter to state court.

6 DATED this 2nd day of November, 2016.

7
8 s/ John C. Dippold

9 s/ John R. Welch

10 John C. Dippold, WSBA No. 25658

11 John R. Welch, WSBA No. 26649

12 CARNEY BADLEY SPELLMAN, P.S.

13 701 Fifth Avenue, Suite 3600

14 Seattle, WA 98104

15 Phone: (206) 622-8020

16 Facsimile: (206) 467-8215

17 Email: dippoldj@carneylaw.com

18 welch@carneylaw.com

19 Attorneys for Plaintiff, Talus 7&8 Investment,
20 LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of November, 2016, I electronically filed the foregoing PLAINTIFF TALUS 7 & 8 INVESTMENT, LLC'S RESPONSE TO ORDER TO SHOW CAUSE REGARDING SUBJECT MATTER JURISDICTION with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Christopher Ian Brain cbrain@tousley.com, efile@tousley.com,
jotey@tousley.com, nchung@tousley.com, PLewis@tousley.com

Cynthia M. Cohen cynthiacohen@paulhastings.com

John C Dippold dippoldj@carneylaw.com, jensen@carneylaw.com

John Richard Welch welch@carneylaw.com, jensen@carneylaw.com

DATED this 2nd day of November, 2016.

s/ John R. Welch

John R. Welch, WSBA No. 26649
CARNEY BADLEY SPELLMAN, P.S.
701 Fifth Avenue, Suite 3600
Seattle, WA 98104
Phone: (206) 622-8020
Facsimile: (206) 467-8215
Email: welch@carneylaw.com
Attorneys for Plaintiff, Talus 7&8 Investment,
LLC